

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12747 of 2006
With
SPECIAL CIVIL APPLICATION No. 12748 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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JANTA CREDIT CO-OP SOCIETY LTD - Petitioner(s)

Versus

HARJIBHAI ISHWARBHAI PATEL - Respondent(s)

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Appearance :

MR AD OZA with MR DR DAVE for Petitioner(s) : 1

MS.P J.JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/08/2006

ORAL JUDGMENT

1. Rule. Learned advocate Ms. P.J Joshi wavier service of rule on behalf of the respective respondents in each of the petitions. At the joint request made by learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In these petitions, the petitioner a Credit Co-operative Society has challenged a common order dated 29/5/2006 passed by the Co-operative Tribunal in Appeals filed by the respondents herein.

3. The respondents were defendants in the Summary Suit No.380/04 filed by the petitioner-society. Though there is a longish history leading to these petitions, the entire background need not to be gone into. It is not in dispute that earlier a condition was imposed upon the respondent in Special Civil Application No.12748/06 herein to deposit 15% of the suit amount to be able to defend himself in the Lavad Suit. It may also be noted however, that against the respondent of Special Civil Application No.12747/06

no such condition has been imposed. It is also not in dispute that the condition of depositing 15% of the suit amount qua the aforementioned respondent has achieved finality. In fact this Court had in the earlier round of litigation insisted that before depositing of such amount, the appeal of the respondent shall not be heard.

4. Despite this position, the Tribunal by its impugned order partially allowed the appeal and remanded the proceedings to the Board of Nominees for fresh consideration without providing for any requirement to deposit a portion of the suit amount.

5. Considering all these aspects of the matter, I find that the order passed by the Tribunal cannot be upheld in *toto*. In so far as the direction for remanding the proceeding is concerned, I see no reason to interfere. However, to the extent the same is done without any pre-condition, the same cannot be sustained.

6. In the result the petitions are allowed in part.

The respondent of Special Civil Application No.12748/06 will be required to deposit before the petitioner-society 15% of the suit amount within a period of six weeks from today. Only upon fulfilling such condition it will be open for the said respondent to defend himself before the Board of Nominees. To the above extent the order of the Tribunal stand modified.

7. In the result, petitions are disposed of in the manner provided herein above. Rule is made absolute accordingly to the above extent.

(Akil Kureshi, J.)

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